REMARKS

In the Advisory Action mailed August 22, 2003, the previous amendment was not entered and claims 1–6 and 8–18 remain rejected under 35 U.S.C. § 102(b) over the *Barringer* reference. In addition, claim 7 remains rejected under 35 U.S.C. § 103(a) over *Barringer* in view of the *Colby* reference.

Claims 1–18 remain pending in the application. Reconsideration and withdrawal of rejections is respectfully requested in view of the following remarks.

A. The Rejection of Claims 1–6 and 8–18 under § 102(b)

Claims 1–6 and 8–18 remain rejected under 35 U.S.C. § 102(b) over *Barringer*. The Advisory Action notes that *Barringer* describes a reliability equation, $R(t)$, that includes a variable for the Mean Time Between Failure (MTBF), which can also be expressed as the inverse of a failure rate (λ). The Advisory Action then implies that since the failure rate (λ) is described as the inverse of MTBF, the reliability equation in *Barringer* inherently provides a direct measurement of the frequency of a system failure.

In fact, equating the failure rate (λ) with the inverse of the <u>Mean</u> Time Between Failure (MTBF) only reinforces the fact that λ describes a <u>mean</u> (*i.e.*, <u>average</u> failure rate) and *does not* inherently provide a <u>direct</u> measure of the frequency of failure. While *Barringer* may note that MTBF is inversely proportional to and average failure rate (λ), the reliability equation still describes nothing more than a conventional Figure of Merit (FOM).

As noted in the previous Response, the rejection of the claims over *Barringer* is respectfully traversed on the ground that the present invention uses Figures of Merit (FOMs) that are completely different than the conventional FOMs described in that reference. The specification states that conventional availability and reliability metrics, such as MTBF, typically fail to account for business impact of failures. As a result, such metrics are not particularly useful in a feedback process for maximizing a level of customer perceived availability or reliability. *See specification*, page 3, lines 27–30.

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In contrast, the present invention includes new kinds of FOMs that are well suited for measuring a customer's perception of the availability and reliability of a system. The factors used in the FOMs of the present invention can include the frequency of a system event, the duration of a system event, and the business impact of a system event. *See specification*, page 4, lines 2–4. Such FOMs are not found in *Barringer*.

The FOM described in *Barringer* is called the effectiveness equation and is the product of four factors called (1) availability, (2) reliability, (3) maintainability, and (4) capability. *See Barringer*, page 2, 6th paragraph. The first three factors (availability, reliability and maintainability) are all explicitly derived from the three conventional FOMs referred to above (*i.e.*, MTBF, MTBM and MTTR). The fourth factor (capability) is defined as the product of "efficiency multiplied by utilization" where "efficiency" is the productive work output versus work input and "utilization" is the ratio of time spent on productive efforts to the total time. *See Barringer*, page 9, 4th paragraph. None of these factors provide a direct measurement of either the frequency, duration or business impact of a system event used in calculating the *Barringer* FOM (*i.e.*, the effectiveness equation).

In contrast, independent claim 1 of the present invention, as amended, is a method of characterizing a system that includes "measuring directly one or more additional indicia" and "calculating a Figure of Merit (FOM) based on contributions of each outage of weighted in accordance with an associated additional indicia," where "the one or more additional indicia selected from frequency, duration and business impact of the outage." *See* claim 1, lines 4–7. As noted above, the *Barringer* FOM lacks any of the directly measured additional indicia in claim 1, and therefore lacks all the limitations of the claim.

Similarly, independent claim 12, as amended, is a computer program product that includes "instructions exectuable to measure directly event data" and "instructions executable to calculate a Figure of Merit (FOM) including contributions for each event data element weighted in accordance with the associated business impacts." Also independent claim 15, as amended, is a monitoring system that includes "an interface to event data that is directly measured" and "means for calculating a Figure of Merit (FOM) including contributions for the event data

weighted in accordance with the associated business impacts." Again, the *Barringer* FOM lacks directly measured event data weighed in accordance with associated business impacts and therefore lacks every limitation of these claims as well.

In the present case, the FOM described in *Barringer* lacks the associated additional indicia in claim 1 and the associated business impacts in claims 12 and 15. Claims 2–6 and 8–11, which depend from claim 1, claims 13 and 14, which depend from claim 12, and claims 16–18, which depend from claim 15, also include these limitations that are absent from *Barrigner*. Accordingly, withdrawal of the rejection of claims 1–6 and 8–18 under 35 U.S.C. § 102(b) over *Barringer* is respectfully requested.

B. The Rejection of Claim 7 under § 103(a)

Claim 7 remain rejected under 35 U.S.C. § 103(a) over *Barringer* in view of *Colby*. This rejection is traversed on the ground that neither *Barringer* nor *Colby* include Figures of Merit (FOM) according to the present invention.

As noted above, the *Barringer* FOM is derived from conventional FOMs and does not suggest direct measurement of additional indicia. Meanwhile, *Colby* provides no description whatsoever of an FOM beyond the suggestion that software improvements can allow FOMs to be calculated and displayed in real time. *See Colby*, page 3, software, 1st list. Thus, claim 7, which depends from claim 1, includes FOMs with additional indicia that are neither taught nor suggested in *Barringer* and/or *Colby*. Because neither *Barringer* nor *Colby* teaches or suggests all the limitations of claim 7, withdrawal of the rejection 35 U.S.C. § 103(a) is respectfully requested.
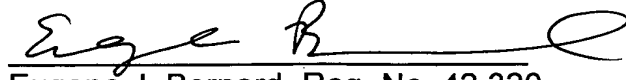
C Conclusion

In view of all of the above, claims 1–18 are believed to be allowable and the case in condition for allowance, which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

No fees are believed to be required with this Response, and should any be required, please charge Deposit Account 50-1123. Should any extension of time be required, please consider this a petition therefore and charge the required fee to Deposit Account 50-1123.

Respectfully submitted,

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